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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,690	04/18/2000	ROLAND COX	JYG122USA	3166

7590 09/16/2002

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/16/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

529670

Applicant(s)

COX

Examiner

MEC/amy

Group Art Unit

16/6

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 6/3/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 13-19 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 13-19 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 13-19 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 25
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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Receipt is acknowledged of Request for time, election, and supplemental amendment (6/3/02).

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13-19 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. One of ordinary skill in the art of controlling mites would not be able to control, as the parameters for identification of control are not provided. Identification of HDM driven out by heat does not constitute elimination of HDM by chemical anti-fungal incorporated into a fiber—it is not possible to identify, then, what is intended as “control” since all fibers tested (Table 2) had HDM. Further, very limited anti-fungal agents are disclosed; absent any showing of efficacy and definition of control, the only compounds experimentally used is triclosan. Tolnaftate was not shown as a manufactured product (bedding) effective to “control” HDM—it was shown to what it is already known to do—reduce *A. repens* growth. Further, an area of concern exists as to the amount and concentration of toxic materials, the unspecified as claimed antifungals, incorporated into man or animal contact materials.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kluff—WO 97/24484.

Antifungal chemicals of the instant invention (claims 5, 6) incorporated into acrylic fibers of foam is (page 6, line 27-line 4, page 7, claim 8) for further production of articles of bedding is disclosed.

Claims 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Cox et al GB 2309461.

See page 1, lines 5-16, page 2, lines 15-17, page 4, and lines 13-16, Example 2. Yarns treated with TOLNAFTATE are formed of acrylic fibers, and made into upholstered articles. The instant method is not met, as the steps are provided, and no other active step is required in the instant method—production of treated fabric articles will inherently provide whatever the instant invention provides, as the mites are not seen

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to have proliferated in the articles or fibers prior to their production. Proliferation of mites after article production is not any different in the instant invention from Cox.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kluft—WO 97/24484 in view of Lebrun et al 4442091.

Kluft (above) provides the essence of the instant invention, but it is not clear if mites and control of mites by antifungal use is disclosed. Lebrun does so disclose, by application of Natamycin (column 3, line 57-line 68, column 4). Treatment of mattresses, floors is disclosed (column 2, lines 39-47) but high amounts (repeated treatments are required).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize treated textiles and foams to make products, to utilize Kluft, modified specifically to control mites, in order to not require repeated after market applications.

The selection of each ingredient is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired.

There is no unusual and/or unexpected results obtained since the prior art is well aware of the use of specific processes for production of textile and foam bedding, upholstery and flooring and no criticality, unexpected, or unobvious effects have been shown by applicant as deriving from the claimed process. Use of the processes for the functionality for which they are known to be used is not a basis for patentability,

Claims 13-19 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The proliferation is not evident to examiner in the specification. Applicant's citation is to effects after formation of the treated fibers and articles, not in the process, as is claimed. The only pre-treatment is active addition of 50 HDM as an experimental test (page 6).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 305-4556 for regular communications and 305-3592 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy:mv
September 10, 2002



NEIL S. LEVY
PRIMARY EXAMINER